

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ANTHONY B. LAWSON	:	
for Redetermination of a Deficiency or for Refund of	:	ORDER
New York State Personal Income Tax under Article 22	:	DTA NO. 816922
of the Tax Law for the Years 1992 through 1994 and of	:	
New York City Nonresident Earnings Tax under the	:	
New York City Administrative Code for 1992 and 1993	:	
and of New York City Personal Income Tax under the New	:	
York City Administrative Code for 1994.	:	

Petitioner, Anthony B. Lawson, P.O. Box 64395, Virginia Beach, Virginia 23467, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 1992 through 1994 and of New York City nonresident earnings tax under the New York City Administrative Code for 1992 and 1993 and of New York City personal income tax under the New York City Administrative Code for 1994.

The Division of Tax Appeals issued a Determination, *Matter of Lawson* (Division of Tax Appeals, August 31, 2000; hereafter the "Determination") granting the petition. On December 15, 2000, petitioner, appearing on his own behalf, filed an application for administrative costs pursuant to Tax Law § 3030. The Division of Taxation appearing by Barbara G. Billet, Esq. (Peter T. Gumaer, Esq., of counsel) filed a response to the application on February 13, 2001.

Based upon the motion papers, the Determination and all pleadings and documents submitted in connection with this matter, Jean Corigliano, Administrative Law Judge, renders the following order.

FINDINGS OF FACT

1. Petitioner, Anthony B. Lawson, filed a petition with the Division of Tax Appeals challenging a Notice of Deficiency which asserted a deficiency in New York State and City taxes for the years 1992 through 1994.

2. On August 31, 2000, a Determination was issued by Administrative Law Judge Frank W. Barrie granting the petition and canceling the Notice of Deficiency. The Determination was served on petitioner by certified mail on August 31, 2000. It was accompanied by a letter and notice to petitioner from Chief Administrative Law Judge Andrew J. Marchese. As pertinent to petitioner's application for costs, the letter states as follows:

Pursuant to section 2010.4 of the Tax Law, the determination finally decides the matters in controversy unless a party to the hearing, either the petitioner or the Division of Taxation, takes exception by requesting review by the Tax Appeals Tribunal. Within 30 days from the date of this notice, any party may file an exception with the Secretary to the Tax Appeals Tribunal.

* * *

If no party to the proceeding files an exception, an application for reasonable administrative costs pursuant to Tax Law § 3030 may be filed with the Division of Tax Appeals by any petitioner who has substantially prevailed with respect to the amount in controversy or with respect to the most significant issue or set of issues presented. *Such application must be filed within 60 days of the date of this notice.* (Emphasis added.)

3. The 30-day period for filing an exception to the Determination expired on September 30, 2000 without an exception being taken by the Division; consequently, the Administrative Law Judge Determination became a final determination on that date (20 NYCRR 3000.17[a][1]), and petitioner had 60 days from the date of Judge Marchese's letter to file an application for costs. Counting from August 31, 2000, the 60th day from the date of Judge Marchese's letter was October 30, 2000.

4. On December 15, 2000, petitioner filed an application for reasonable administrative costs under Tax Law § 3030. The application is in the form of a handwritten letter signed by petitioner. The letter sets forth six points in support of petitioner's application. Petitioner states that he is the prevailing party. He asserts that the application "is filed within 30 days of the date of the closing of this case as noted in the court's notice 10 November 2000." He alleges that his net worth is less than \$2 million. He states that his administrative costs were \$2,365.35, but he does not list particular costs incurred. Petitioner notes that no expert witnesses were needed and, finally, he states that he received legal advice from an attorney but no bill for services was ever submitted to him.

5. The Division of Taxation ("Division") filed a response to petitioner's application on February 13, 2001, having sought and received permission to file a response anytime before February 15, 2001. In its response, the Division argues that petitioner's application must be denied because he failed to show that he was the prevailing party pursuant to Tax Law § 3030. The Division points to the following to establish that petitioner is not the prevailing party for purposes of section 3030.

(a) The Division notes that petitioner's application was not received by the Division of Tax Appeals until on or about December 15, 2000, approximately 45 days after the period for filing an application for costs had expired.

(b) The Division claims that petitioner's assertion that his net worth is less than \$2 million does not constitute sufficient proof of net worth for purposes of Tax Law § 3030.

(c) Petitioner did not submit an itemized statement of administrative costs incurred in the administrative proceeding and did not provide sufficient information to establish that any

administrative costs were incurred on or after the date of the issuance of the Notice of Deficiency.

(d) Finally, the Division argues that the Commissioner's position at the time the notice was issued was substantially justified.

CONCLUSIONS OF LAW

A. In 1997, the New York State Legislature added Tax Law § 3030 to Article 41 of the Tax Law, which is cited as the "Taxpayer's Bill of Rights" (L 1997, § 31, eff September 10, 1997). Section 3030 is modeled on section 7430 of the Internal Revenue Code, also known as the Federal Taxpayers Bill of Rights 2 (*see*, Legislative Mem, McKinney's Session Laws of NY, at 2549). As pertinent here, Tax Law § 3030(a) provides that in any administrative proceeding which is brought by the Commissioner of Taxation and Finance ("Commissioner") in connection with the determination of any tax, the prevailing party may be awarded a judgement or settlement where (1) the taxpayer is the prevailing party (Tax Law § 3030[a]); (2) the fees are for administrative costs allocable to New York State and not to any other party (Tax Law § 3030[b][2]); (3) the taxpayer did not unreasonably protract the administrative proceeding (Tax Law § 3030[b][3]); and (4) the costs claimed are reasonable (Tax Law § 3030[a]);

"Prevailing party" is defined by Tax Law § 3030(c)(5)(A) as any party (other than the Commissioner or a creditor of the taxpayer)

(I) who

(I) has substantially prevailed with respect to the amount in controversy, or
(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and,

(ii) who

(I) within 30 days of a final judgment in the action, *submits to the court* an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under [section 3030], and the amount sought, including an itemized statement from an attorney or expert witness

representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed (*except to the extent differing procedures are established by rule of court*), and

(II) *is* an individual whose net worth did not exceed two million dollars at the time the civil action was filed . . . (Tax Law § 3030[c][5][A]; emphasis added).

Tax Law § 3030(c)(5)(C) provides:

Any determination under this paragraph as to whether a party is a prevailing party shall be made by agreement of the parties or

(I) in the case where the final determination with respect to tax is made at the administrative level, by the division of tax appeals, or

(ii) in the case where such final determination is made by a court, the court.

B. The first issue to be resolved is whether petitioner is the prevailing party with respect to the administrative proceeding to which his application for costs applies. The Division argues that petitioner is not the prevailing party. The first ground offered for its position is that the application was not filed within 30 days of the final determination.

Although Tax Law § 3030(c)(5)(C) confers jurisdiction on the Division of Tax Appeals to determine whether a party is a prevailing party, the statute contains no specific provisions for submitting such an application to the Division of Tax Appeals. In fact, the statute of limitations relied on by the Division refers only to applications made to a court of law which creates some confusion regarding the appropriate period of limitation to apply in this case. Generally, ambiguity in taxing statutes are to “be construed in favor of the taxpayer and against the taxing authority, and the burdens they impose are not to be extended by implication” (*Matter of American Cyanamid & Chem Corp. v. Joseph*, 308 NY 259, 263). When, however, reasonable minds may disagree as to the perceived meaning of the words used, it is appropriate to resort to “rules of construction and interpretation of the enactment with reference to the objectives sought

to be achieved and the contextual spirit and purpose of its enactment” (*1605 Book Center, Inc. v. Tax Appeals Tribunal*, 83 NY2d 240, 609 NYS2d 144).

As the Division of Tax Appeals interprets Tax Law § 3030(c)(5)(A)(ii)(I), the period of limitation set forth therein applies with equal force to applications made in the Division of Tax Appeals (*see*, Letter of Chief Administrative Law Judge Andrew Marchese, August 31, 2000). It is reasonable to interpret the statute of limitations in this way since section 3030(c)(5)(A)(ii)(I) expresses the Legislature’s desire to create a short period of limitation for applications for costs, and to interpret it otherwise would result in an open ended situation with no period of limitation for filing an application for costs. The Legislature cannot have intended this result.

C. In view of the conclusion reached above, I find that petitioner’s application for costs may not be considered in the Division of Tax Appeals because it was not filed within 30 days of the final determination. Petitioner submitted no evidence to support his claim that he received a notice from a court on November 10, 2000 regarding the closing of the administrative proceeding. The Division of Tax Appeals issued no such notice, and I cannot identify the document to which he refers. In any case, Judge Marchese’s letter of August 31, 2000 unambiguously states that an application for costs was to be filed within 60 days from the date of his letter (in effect, 30 days from the date the Determination became final).

D. The application of Anthony B. Lawson for administrative costs pursuant to Tax Law § 3030 is denied with prejudice.

DATED: Troy, New York
April 12, 2001

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE